

REMARKS/ARGUMENTS

Notice of Non-Compliant Amendment

In response to the Notice of Non-Compliant Amendment mailed January 29, 2007, an amendment with the complete listing of claims and text of all pending claims (including withdrawn claims) is hereby submitted.

Election/Restriction

Claims 51-55 have been withdrawn without prejudice as non-elected claims in response to a Patent Office restriction requirement.

Objection to the Specification due to an informality

In the Office Action mailed October 16, 2006, the disclosure was objected to for an informality, i.e., updating the status of the application cross-referenced on page 1 of the specification. The specification has been amended to provide this update, including identification by serial number and patent number of the application cross-referenced on page 1 of the specification.

Claim Objection due to an informality

Claim 45 was objected to due to a lack of antecedent basis for the term telemetry processor. Independent claim 44 has been amended to provide this antecedent basis for the term telemetry processor.

Claim Rejection – 35 U.S.C. § 102(b)

Claims 44, 46-50, 56 and 58-61 were rejected under 35 U.S.C. 102(b) as being anticipated by Blanchette et al. (U.S. Patent No. 5,292,343).

Independent claims 44 and 56 have each been amended to claim that "the above steps are performed in a telemetry processor distinct from a main processor of the device that adjusts therapy based on the received message." By way of illustration, Fig. 3 of the present application shows a telemetry module 44 that includes a telemetry processor 62 (see Figs. 5 and 6), which is distinct from a main processor 34. As noted in the present application, the performing steps in a telemetry processor distinct from the main processor in an implantable medical device results under some circumstances in reducing demands on the main processor, conserving energy, increasing telemetry processing speed and many other advantages. *See* Abstract and Summary of the Invention of the present application.

Applicants note that in Notice of Allowability (mailed June 2, 2003) in the parent application (Serial No. 09/595,971, issued as U.S. Patent No. 6,738,670), the Examiner's Reasons for Allowance states: "The prior art of record fails to disclose a telemetry processor comprising the recited control means for operating the telemetry processor according to instruction stored in memory with the recited decoding and encoding means. The examiner considers the means-plus-function language of claim 59 to fall under the provision of §112, 6th paragraph, and therefore be limited to structures disclosed in the specification or equivalents thereof. Control means for operating a main processor are not considered to be the equivalent of control means for operating a telemetry processor, as the applicant distinguishes telemetry processors from main processors. Telemetry processors are taught by the applicant to reduce demands on the main processor, conserve energy, increase telemetry processing speed, etc. (see page 2, lines 9-17)."

Blanchette (which was of record in the parent application) does not teach a telemetry processor distinct from a main processor of the device that adjusts therapy based on the received message, and thus does not teach any steps performed in a telemetry processor distinct from a main processor as claimed in claims 44 and 56 as amended. For at least the same reasons that independent claims 44 and 56 are novel over Blanchette, so are dependent claims 46-50 and 58-61. In view of the foregoing, it is respectfully submitted that the § 102(b) rejection based on Blanchette should be withdrawn.

Claim Rejection – 35 U.S.C. § 103(a)

Claims 45 and 57 were rejected under 35 U.S.C. 103(a) as being unpatentable over Blanchette et al. (U.S. Patent No. 5,292,343) in view of deCoriolis et al. (U.S. Patent No. 5,342,408). The deCoriolis patent (which was of record in the parent application) does not teach a telemetry processor distinct from a main processor of the device that adjusts therapy based on the received message, and thus does not teach any steps performed in a telemetry processor distinct from a main processor. Because deCoriolis does not remedy the deficiencies in Blanchette, the combination of Blanchette and deCoriolis, even if proper, does not render claims 45 or 57 unpatentable. Claims 45 and 57 are patentable for at least the same reasons that the independent claims from which they depend are patentable over the prior art.

Conclusion

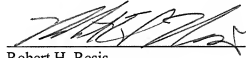
In view of the foregoing, it is respectfully submitted that pending claims 44-50 and 56-61 are in condition for allowance. The Examiner is invited to contact the undersigned at the telephone number provided below, should it be deemed necessary to facilitate prosecution of the application.

Respectfully submitted,

BANNER & WITCOFF, LTD.

Dated: February 12, 2007

By:



Robert H. Resis
Registration No. 32,168
Direct Dial: (312) 463-5405

BANNER & WITCOFF, LTD.
10 S. Wacker Dr., Suite 3000
Chicago, IL 60606-7407
Tel: (312) 463-5000
Fax: (312) 463-5001